

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)

v.)

CRIMINAL NO. 04-10235-MLW

CORY HUBBARD)

MOTION TO ENLARGE TIME AND
MOTION TO CONTINUE HEARING

The government respectfully moves (1) for an enlargement of time within which to respond to the defendant's motion for discovery (the "Motion"), from May 13, 2005 to and including May 20, 2005, and (2) to continue the hearing on the Motion, currently scheduled for May 19, 2005, to a date beyond May 20, 2005 convenient to the Court.

As grounds therefor, the government states that on April 29, 2005, the defendant filed the Motion, seeking discovery in aid of a Franks hearing. The factual predicate for the Motion was the claim that the search warrant affidavit contained misleading information. In substance, the defendant alleged that the search warrant affidavit contained information that the defendant was driving a green Passat vehicle bearing Massachusetts registration 15VP11 on some of the occasions when officers surveilled him¹; that as of February 13, 2004 this car was registered to somebody other than the defendant; that the affidavit did not indicate whether the police had conducted a search of Registry of Motor

¹The affidavit also avers that the defendant was seen driving a white Buick as well.

Vehicles records to obtain information regarding the registration; and that this rendered the affidavit misleading. In fact, however, the police used the same affidavit supporting the search of the defendant's apartment to support a search of the Passat itself, and, on the third page of the affidavit, the description of the Passat included both the name and the date of the birth of the person to whom it was registered.² Accordingly, the affidavit was not in misleading in this respect.

On May 9, 2005, the government received additional materials filed by the defendant regarding the green Passat, including an affidavit of the person to whom the Passat was registered between February 13, 2004 and April 1, 2004. This affidavit contains new allegations regarding the Passat and the defendant's use vel non thereof. While the government was prepared to respond to the Motion by May 13 based on the original allegations contained in the Motion, the government requires additional time to investigate the new allegations.

Accordingly, the government respectfully moves this Court to

²The government attached the search warrant affidavit and the warrant for the defendant's apartment to its opposition to the defendant's motion to suppress evidence. Out of a concern for the privacy of the defendant and third parties, the government redacted not only the first five digits of the defendant's Social security account number and all but the year of his date of birth, but also the identity and date of birth of the individual to whom the Passat was registered. The identity of the individual identified in the search warrant affidavit as the registrant of the Passat is the same individual identified as such by the defendant in his recent filings.

(1) enlarge the government's time to respond to the Motion from May 13, 2005 to and including May 20, 2005, and (2) to continue the hearing on the Motion to a date beyond May 20, 2005.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Robert E. Richardson
Robert E. Richardson
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

Suffolk, ss.

Boston, Massachusetts
May 10, 2005

I hereby certify that a true copy of the foregoing was served by electronic filing upon counsel for the defendant, Frank D. Camera, Esq., 56 N. Main Street, Suite 321, Fall River, MA 02720.

/s/ Robert E. Richardson
Robert E. Richardson
Assistant U.S. Attorney